

2015 WL 4161935 (Cal.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of California,
Central District.
Los Angeles County

Odella R. HARRISON, an individual, by and through Linda M. Williams, her guardian ad litem, Plaintiff,

v.

Harold LEFFALL, Jr., an individual; Jacqueline Meyon Brown, an individual;
Rosalyn Leffall, an individual; and Does 1 through 50, inclusive, Defendants.

No. BC503204.
January 5, 2015.

Plaintiff Odella R. Harrison's Notice of Motion and Motion for Attorneys' Fees

Tami Kameda Sims (CA 245628), tami.sims@kattenlaw.com, Nicholas M. Gross (SBN 285403), nicholas.gross@kattenlaw.com, Katten Muchin Rosenman LLP, 2029 Century Park East Suite 2600, Los Angeles, CA 90067-3012, Telephone: 310.788.4400, Facsimile: 310.788.4471, Anna Burns (SBN 89510), abums @bettzedek.org, Bet Tzedek Legal Services, 3250 Wilshire Blvd., 13th Floor, Los Angeles, CA 90010, Telephone: (323) 549-5847 (direct), Fax: (213)471-4568, for plaintiff Odella Harrison, by and through Linda Williams guardian ad litem.

Hon. Joseph Kalin.

Dept. 50

Declarations of Tami Sims and Nicholas Gross and [Proposed] Order filed concurrently herewith

Date: March 25, 2015

Time: 8:30 a.m.

Place: Department 50

SAC Filed: April 22, 2014

Judgment Entered: Nov. 6, 2014

TO THE COURT, ALL PARTIES, AND ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 25, 2015, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 50 of the above-entitled court, the Honorable Joseph Kalin presiding, plaintiff Odella R. Harrison, by and through Linda M. Williams her guardian *ad litem* ("Plaintiff"), will and hereby does move for an award of attorneys' fees in the amount \$142,636 against Defendants Harold Leffall, Jr., Jacqueline Meyon Brown Leffall, and Rosalyn Leffall ("Defendants"), which will then be added to the judgment.

This Motion is made pursuant to Cal. Welf. & Inst. Code § 15657.5 on the ground that Plaintiff proved by a preponderance of the evidence that Defendants are liable for financial elder abuse.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the attached Declaration of Tami Sims and exhibits thereto, the Court's file and such other argument and evidence as may be presented at the hearing on this motion.

DATED: January 5, 2015

KATTEN MUCHIN ROSENMAN LLP

By: <<signature>>

Tami Kameda Sims

Attorneys for Plaintiff ODELLA R. HARRISON by and through LINDA M. WILLIAMS, her guardian ad litem

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Odella R. Harrison, by and through Linda M. Williams her guardian *ad litem* ("Plaintiff" or "Mrs. Harrison"), prevailed at trial against Defendants Harold Leffall, Jr., Jacqueline Meyon Brown Leffall, and Rosalyn Leffall ("Defendants") for **financial elder abuse**, and obtained a unanimous jury verdict. Plaintiff now seeks \$142,636 in attorneys' fees in connection with her successful prosecution of her **financial elder abuse** claims pursuant to [Cal. Welf. & Inst. Code § 15657](#).¹

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties.

Mrs. Harrison is an eighty-eight year old woman with advanced [dementia and Alzheimer's disease](#). Currently, she resides in an assisted living facility. Defendants are Mrs. Harrison's former neighbors.

A. The Pleadings and the Court's Grant of Plaintiff's Motion for Summary Adjudication.

Mrs. Harrison was diagnosed with [dementia and Alzheimer's disease](#) in May 2010. In March 2011, Mrs. Harrison purportedly signed a grant deed transferring title to her home, which she owned outright, to herself and Mr. Leffall as joint tenants. In March 2013, Plaintiff filed her initial Complaint, alleging seven causes of action arising from the transfer of Mrs. Harrison's house against Jacqueline Meyon Brown Leffall ("Jaqueline Leffall") and Mr. Harold Leffall, Jr. ("Harold Leffall").² In September 2013, Plaintiffs current law firm Katten Muchin Rosenman, LLP ("Katten") substituted in as Plaintiffs counsel. (Declaration of Tami Sims ¶ 3.)

After Katten was substituted in as counsel, Plaintiff propounded written discovery to *inter alia* to detective Todd Megerle with the Los Angeles Sherriffs Department that had conducted an investigation on Mr. Leffall. The documents produced by Detective Megerle contained checks written from Mrs. Harrison's accounts to Harold Leffall and his family members; bank records showing numerous unexplained ATM withdrawals from Mrs. Harrison's accounts; mobile phone accounts and an all-terrain vehicle all obtained using Mrs. Harrison's name and credit for the benefit of the Defendants; and payments from Mrs. Harrison's bank accounts to accounts owned by Defendants. Accordingly, in January 2014, Plaintiff filed a motion for leave to file an amended complaint to add defendant Rosalyn Leffall ("Rosalyn Leffall") and to add claims of **financial elder abuse** and

related causes of action. The court granted the motion and Plaintiff filed a Second Amended Complaint³ alleging the actions based on **financial elder abuse**. (*Id.* ¶ 4.)

In April 2014, Plaintiff moved for summary adjudication to cancel the grant deed based on her causes of action pursuant to Cal. Civ. Code §§ 38 and 39. The court granted the motion and canceled the grant deed. Thus, only claims relating to the **financial elder abuse** remained for trial. (*Id.* 5.)

B. Defendants Request a Mandatory Settlement Conference.

After Plaintiff prevailed on her motion for summary adjudication, Defendants' counsel requested that the court order the parties to mandatory settlement conference. Plaintiff indicated that she did not want to attend, but would do so, if the. Court insisted. The Court ordered the parties to attend a full day settlement conference on July 3, 2014. Despite having requested the settlement conference, Defendants Jaqueline Leffall and Rosalyn Leffall did not appear, as required. (Sims Decl. ¶ 6.)

Consequently, Plaintiff was forced to prepare for and attend a mandatory settlement conference. The case did not settle. (*Id.*)

B. Defendants' Serial Attempts to Delay Trial.

Trial in this matter was originally set for July 16, 2014, but was continued on at least four occasions due to Defendants' conduct. (See Declaration of Nicholas Gross ("Gross Decl.") ¶¶ 3011.)

1. The morning that trial was set to begin, on July 16, 2014, Defendants' counsel J.B. Casas, and Mr. Leffall appeared and represented to the Court that Defendants Jacqueline and Rosalyn Leffall were both unavailable for trial due to medical reasons. Plaintiff's counsel requested documentary evidence of this purported "medical unavailability" from Defendants. No documentation was provided. The Court continued trial to July 23, 2014.

2. On July 23, 2014, the morning of trial, Defendants' counsel represented for the first time that Defendant Jacqueline Meyon Brown Leffall obtained a restraining order against Harold Leffall, Jr., which purportedly created an incurable conflict of interest. The Court continued the trial to July 28, 2014 because of Mr. Casas's representations.

3. On July 28, 2014, Defendants' counsel represented that he was in contact with Harold Leffall, Jr. - at least as of July 25, 2014 - and that the incurable conflict as between Harold and Jacqueline Leffall still existed. Defendants' counsel represented that he would be filing a motion to withdraw as counsel, which he set for hearing on August 26, 2014. Consequently, the Court continued the trial to October 1, 2014.

Plaintiff's counsel obtained a copy of the court records' file regarding the restraining order. When Plaintiff received the file, it included an "application to terminate restraining order" filed by Jacqueline and Harold Leffall on July 24, 2014 that contained signed declarations from both Jaqueline and Harold Leffall. The declarations both stated unequivocally that "We have resolved our differences and conflicts." Thus, the restraining order was voluntarily "withdrawn" immediately after it was used to obtain a delay in the trial date.

Based on this evidence, Plaintiff's counsel filed an opposition to Defendants' counsel's motion to withdraw as well as a motion for sanctions on the grounds that the motion to withdraw was improper and was filed for the purpose of delaying Plaintiff's trial. Plaintiff also filed an *ex parte* application for an order shortening the safe harbor period for a motion for sanctions and the time to hear a motion for sanctions. Defendants' counsel voluntarily withdrew his motion and the hearing was vacated. Trial remained set for October 1, 2014 because the Court had already started a lengthy trial and was dark for the second half of September.

4. On September 12, 2014, Harold Leffall filed for bankruptcy, triggering an automatic stay in the civil action. Plaintiffs counsel was forced to file a notice of emergency motion for relief of stay. Plaintiffs counsel informed the bankruptcy court of Defendants' actions in delaying the trial and requested that the stay be lifted. The bankruptcy court granted the motion, clearing the way for Plaintiff to have her day in court after a three-month delay. The parties agreed to transfer to Department 50 for the trial and for the remainder of the proceedings.

C. Plaintiff Prevails At Trial.

At trial, Plaintiff sought to hold Harold Leffall liable for **financial elder abuse**, conversion, and constructive fraud. Plaintiff sought to hold Jacqueline Leffall and Rosalyn Leffall liable for **financial elder abuse**.

The trial was bifurcated and proceeded in two phases. In the first phase, the jury would determine liability and whether Harold Leffall acted with malice, oppression, or fraud that would permit the imposition of punitive damages. If necessary, in the second phase, the jury would determine the amount of punitive damages, if any, against Harold Leffall.

The first phase of the trial lasted for four days, October 2, 6-8, 2014. The second phase of the trial occurred on October 8-9, 2014.

In her case in chief, Plaintiff presented seven witnesses: Plaintiffs daughters Linda and Karen Williams, Detective Megerle, Doctor Diana Homeier, Jacqueline Leffall, Harold Leffall and Rosalyn Leffall. The testimony of Harold and Rosalyn Leffall was conducted through the designation of deposition testimony as both Defendants failed to appear for trial. Defendants presented two witnesses: Jaqueline Leffall and Mrs. Wilma Greene.

After hearing counsel's opening statements, the introduction and admission of the witnesses and the documentary evidence, and counsel's closing statements, the jury found in favor of Plaintiff in all respects. Specifically:

- The jury unanimously found in favor of Plaintiff against Harold Leffall for **financial elder abuse**, conversion, and constructive fraud.
- The jury unanimously found in favor of Plaintiff against Jaqueline Leffall for **financial elder abuse**.
- The jury unanimously found in favor of Plaintiff against Rosalyn Leffall for **financial elder abuse**.
- The jury unanimously found that Harold Leffall had acted with malice, oppression, and fraud.

Accordingly, the jury found that Defendants are jointly and severally liable to Plaintiff in the amount of \$ 57,943.93. In the second phase, the jury found that Harold Leffall was liable to Plaintiff for punitive damages in the amount of \$95,000.

III. PLAINTIFF IS ENTITLED TO HER REASONABLE ATTORNEYS' FEES EXPENDED IN PROSECUTING HER CLAIMS FOR **FINANCIAL ELDER ABUSE**.

A. **Financial Elder Abuse**

At trial, Plaintiff established **financial elder abuse** against all of the Defendants by proving by a preponderance of the evidence that Defendants: (1) took, secreted, appropriated, or obtained personal property of an **elder** for a wrongful use or with intent to defraud, or both; (2) assisted in taking, secreting, appropriating, obtaining, or retaining personal property of an **elder** for a wrongful use or with intent to defraud, or both; or (3) took, secreted, appropriated, obtained, or retained personal property of an **elder** by undue influence, or assisted another in so doing. *See Cal. Welf. & Inst. Code § 15610.30* (2014); *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 174 (2009) (explaining that “**financial abuse** of an **elder** can be stated not only against the person who takes the property, but also against the person who secretes, appropriates, or retains the property in bad faith”).

With respect to Harold Leffall, through the same evidence that supported Plaintiff's claim for **financial elder abuse**, Plaintiff also proved conversion and constructive fraud.

B. Standards for Attorneys' Fees

Pursuant to section 15657.5 of the Welfare and Institutes Code, whereas here, the plaintiff has “proven by a preponderance of the evidence that a defendant is liable for **financial abuse** ... in addition to compensatory damages and all other remedies otherwise provided by law, the court *shall* award to the plaintiff reasonable attorney's fees and costs.” Cal. Welf. & Inst. Code § 15657.5(a)-(b) (emphasis added); *Das v. Bank of Am., N.A.*, 186 Cal. App. 4th 727, 735 (2010); *Wood v. Santa Monica Escrow Co.*, 151 Cal. App. 4th 1186, 1188 (2007) (explaining that section 15657.5 “provides for an award of attorney fees to a plaintiff who prevails on a cause of action alleging **financial abuse** of an **elder** adult.”).

To calculate reasonable attorneys' fees, California courts generally apply the lodestar approach, multiplying the number of hours reasonably expended by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095-96 (2000). A “reasonable hourly rate is that prevailing in the community for similar work.” *Id.* at 1095. Regarding the number of hours reasonably expended, “a party who qualifies for a fee should recover for all hours reasonably spent unless special circumstances would render an award unjust,” including hours expended on the establishing the fee award. *Vo v. Las Virgenes Mun. Water Dist.*, 79 Cal. App. 4th 440, 446 (2000); *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). In calculating the lodestar, the Court may adjust the figure based on a number of factors, including “the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.” *PLCM Group*, 22 Cal. 4th at 1096 (quoting *Melnyk v. Robledo*, 64 Cal. App. 3d 618, 623-24 (1976)).

A declaration by counsel identifying those that worked on the case, their hourly rates and time spent on the matter is adequate to substantiate the amount of attorneys' fees to be awarded. *Weber v. Langholz*, 39 Cal. App. 4th 1578, 1587 (1995). Copies of billing statements or contemporaneous timesheets are not required. *Id.*

With respect to timing, a motion for attorneys' fees for “services up to an including the rendition of judgment in the trial court ... must be served and filing within the time for filing a notice of appeal.” Cal. R. Ct. 3.1702(b)(1). The time to file a notice of appeal in this case is within 60 days after the superior court clerk serves the “Notice of Entry” of judgment showing the date that the judgment was served. Cal. R. Ct. 8.104(a)(1)(A).

C. Plaintiff's Requested Attorney Fees Are Reasonable.

Plaintiff requests \$142,636 in attorneys' fees for work performed by its pro bono counsel Tami Sims and Nicholas Gross.⁴ Defendants repeatedly took action to delay the trial. Once Plaintiff finally had her day in court she prevailed in every respect. The jury unanimously found in Plaintiffs favor for each and every issue at trial. Plaintiff seeks attorneys' fees for fees actually incurred that were reasonably necessary for the successful prosecution of Plaintiff's **financial elder abuse** claims. As detailed in the declarations of Tami Sims and Nicholas Gross filed concurrently herewith, this includes time for the following work:

- Preparing the amended complaint that added the causes of action for **financial elder abuse**;
- Preparing for and taking the depositions of the Defendants;
- Preparing for and attending a mandatory settlement conference requested by Defendants;
- Marshalling the evidence for **financial elder abuse** to present at trial;

- Preparing trial documents including witness lists, exhibit lists, and jury instructions;
- Witness preparation, preparing witness outlines, and deposition designations;
- Appearing to start trial and attending multiple final status conferences, all necessitated by Defendants' repeated attempts to delay trial;
- Preparing and attending phase 1 of trial. (Phase 2 was for punitive damages against Harold Leffall and Plaintiff does not include these fees in her request). (Sims Decl. ¶ 18, Ex. A.)

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court award her \$142,636 in attorney fees, which will then be added to the judgment.

DATED: January 5, 2015

KATTEN MUCHIN ROSENMAN LLP

By: <<signature>>

Tami Kameda Sims

Attorneys for Plaintiff ODELLA R. HARRISON by and through LINDA M. WILLIAMS, her guardian ad litem

Footnotes

- ¹ Plaintiff previously submitted a memorandum of costs as the prevailing party requesting \$28,251.17 in costs that were necessarily incurred in this case.
- ² The Complaint alleged seven causes of action: (1) Cancellation of Written Instrument; (2) Quiet Title; (3) **Financial Elder Abuse**; (4) Cancellation of Instrument Based Upon Fraud In Factum (5) Rescission Based Upon Undue Influence; (6) Rescission Based Upon Unilateral Mistake; and (7) Ejectment.
- ³ The First Amended Complaint inadvertently misspelled Rosalyn Leffall's name, thus, the Second Amended Complaint corrected this error.
- ⁴ Although Bet Tzedek and Katten have provided pro bono legal services to Plaintiff, Plaintiff is still entitled to an award of attorneys' fees. See *Lolley v. Campbell*, 28 Cal. 4th 367, 374 (2002) (holding that an indigent employee represented by the labor commissioner is entitled to attorneys' fees); *Rogel v. Lynwood Redevelopment Agency*, 194 Cal. App. 4th 1319, 1332 (2011) ("Our Supreme Court has held that attorneys' fees may not be reduced because the prevailing plaintiffs are represented by public interest law firms, which do not charge their clients for their services."); *Rosenauro v. Scherer*, 88 Cal. App. 4th 260, 287 (2001) (explaining that "attorney fees can be recovered pursuant to a statute that allows their recovery, even where the client is not charged those fees, as long as there exists an attorney-client relationship").